

Durham Research Online

Deposited in DRO:

23 September 2014

Version of attached file:

Published Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Brooks, Thom (2014) 'On F. H. Bradley's "Some remarks on punishment".', *Ethics.*, 125 (1). pp. 223-225.

Further information on publisher's website:

<http://dx.doi.org/10.1086/677017>

Publisher's copyright statement:

© 2014 by The University of Chicago.

Additional information:

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in DRO
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full DRO policy](#) for further details.

On F. H. Bradley's "Some Remarks on Punishment"*

Thom Brooks

Most philosophers reject what we might call "penal pluralism": the idea that punishment can and should encompass multiple penal goals or principles. This is rejected because it is often held that different penal goals or principles will conflict: the goal of punishing an offender to the degree deserved may differ and even undermine the goal of enabling deterrence or rehabilitation. For this reason, most philosophers argue that we must make a choice, such as choosing between retribution and its alternatives. In "Some Remarks on Punishment," F. H. Bradley reexamines the justification of punishment in light of a critique of Darwinism's importance for ethics. My primary focus is on Bradley's substantive discussion of punishment only because it is here that this article's arguments have most relevance for us today.

Bradley argues—in his characteristically abrasive style—that such thinking is "one-sided" and misguided: retribution, deterrence, and rehabilitation represent different penal goals, but they need not be understood as different and incompatible penal theories. What we require is a new framework that can provide a coherent, unified theory of punishment bringing together these different goals (279). Bradley's aim is to dispel the widely held view of his work on punishment as offering a strong view of retributivism.¹ Critics at the time, such as Hastings Rashdall writing in the *International Journal of Ethics*, accused Bradley of defending punishment for its own sake in his *Ethical Studies*.² John Stuart Mackenzie argued that Bradley offers "emphatic" support to claims his "view of punishment . . .

* A retrospective essay on F. H. Bradley, "Some Remarks on Punishment," *International Journal of Ethics* 4 (1894): 269–84. All references to page numbers are to this article, unless otherwise noted.

1. See Thom Brooks, "Is Bradley a Retributivist?" *History of Political Thought* 32 (2011): 83–95.

2. See Hastings Rashdall, "The Theory of Punishment," *International Journal of Ethics* 2 (1891): 20–31; and F. H. Bradley, *Ethical Studies* (Oxford: Oxford University Press, 1876).

appears to accord best with the origin of punishment among early peoples.”³ “Some Remarks on Punishment” is Bradley’s full-length response offering an important restatement of his position in which he argues that the “retributive view pure and simple will not work” (274). This is a clear rejection of a still commonly held misinterpretation of his theory of punishment.

Bradley’s article is of contemporary interest as a first attempt at the hybrid theories of punishment offered later by Rawls and Hart.⁴ The latter argue that retributivist and deterrent approaches answer different questions and so can be brought together in a mixed theory of punishment. Retributivist approaches ask why we should punish one individual instead of another for a crime; approaches focused on promoting deterrence ask why we should punish individuals more generally.⁵ The problem is that it is unclear what role consequences genuinely play if individuals are punished solely in terms of their retributivist desert, and this has led most philosophers to reject penal pluralism as incoherent or unattractive.⁶

Bradley’s solution to overcoming the problem of incoherence is admittedly unattractive. He argues that penal pluralism can be possible within a new framework of securing societal maintenance (or “the welfare of the state”) through punishing offenders: “I find . . . no difficulty in the increase or diminution of the penalty by considerations other than desert. But, since the welfare of the state is used in punishment as the criterion of desert, I would remark that such increase or diminution may be less than is imagined” (284n). Bradley does not reject desert as a criterion for determining the justification and distribution of punishment, but rather he denies it can and should be applied in every case. The central idea is that other penal purposes can be justified, and which we select will depend on how best to promote societal maintenance. This framework overcomes the problem of incoherence at the expense of creating a new problem regarding his strongly held communitarian commitments which few today might accept.⁷

Nevertheless, Bradley’s essay marks a key historical moment in the development of penal theories. The orthodox view is that different pe-

3. J. S. Mackenzie, *A Manual of Ethics*, 4th ed. (London, 1901), 405 n. 1.

4. John Rawls, “Two Concepts of Rules,” *Philosophical Review* 64 (1955): 3–32; and H. L. A. Hart, *Punishment and Responsibility* (Oxford: Clarendon, 1968).

5. See Rawls, “Two Concepts of Rules,” 5–6; and Hart, *Punishment and Responsibility*, 233–36.

6. See Douglas Husak, “Why Punish the Deserving?” *Noûs* 26 (1992): 447–64; and Richard Lippke, “Mixed Theories of Punishment and Mixed Offenders: Some Unresolved Tensions,” *Southern Journal of Philosophy* 44 (2006): 273–95.

7. See Peter Nicholson, *The Political Philosophy of the British Idealism: Selected Studies* (Cambridge: Cambridge University Press, 2009), chap. 1.

nal goals cannot be united in a coherent framework. Bradley demonstrates that penal pluralism in a coherent theory is possible, but there remains the problem of whether it can be rendered more compelling.

This has significant contemporary importance because while many philosophers reject penal pluralism, many sentencing guidelines embody it. The Model Penal Code published in 1962 by the American Law Institute recommends incorporating multiple penal goals into sentencing decisions, including retributivist, deterrent, and rehabilitative elements.⁸ This code has had a profound influence on guidelines for other countries, such as England and Wales.⁹ While penal pluralism is incorporated in the decision-making framework for determining prison sentences influenced by the code, these guidelines have been criticized for lacking in coherence and any clear rationale for why some penal purposes are included and not others.¹⁰

While Bradley's specific proposal may require revisions, his approach helps to reveal how we might construct the coherent framework we require for the penal pluralism adopted in our widely used sentencing guidelines.¹¹ Bradley shows that penal pluralism can be possible. Our project is to render it more plausible. Bradley's "Some Remarks on Punishment" is an insightful, groundbreaking work whose history and potential for contemporary significance demands wider recognition than received thus far.

8. American Law Institute, *Model Penal Code* (Philadelphia: American Law Institute, 1962), sec. 1.02.

9. See sec. 142(1) of the Criminal Justice Act, 2003.

10. See Paul Robinson, *Distributive Principles of Criminal Law* (Oxford: Oxford University Press, 2008), chap. 11.

11. See Thom Brooks, *Punishment* (New York: Routledge, 2012), 126–32.